

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

ALBELEE HAQUE,
Appellant

v.

**DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,**
Respondent

Case No.: C-14-15

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the state's Human Resources Division to uphold DEP's decision to deny Ms. Haque's request for reclassification is affirmed and her appeal under Docket No. C-14-15 hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and Stein, Commissioners [McDowell – Absent]) on October 30, 2014.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Mcihelle Gates, Esq. (for Appellant)

Kenneth F. Langley, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Albelee A. Haque,
Petitioner

v.

Docket Nos. CS-14-207; C-14-15 (Civil
Service Commission)

Dept. of Environmental Protection,
Respondent

Dated:

Appearance for Appellant:

Michelle S. Gates, Esq.

Mass. Organization of State Engineers and Scientists (MOSES)
90 North Washington Street, 3rd Floor
Boston, MA 02114

Appearance for Appointing Authority:

Kenneth F. Langley, Esq.

Dept. of Environmental Protection
One Winter Street, 4th Floor
Boston, MA 02108

Administrative Magistrate:

Sarah H. Luick, Esq.

Summary of Tentative Decision

Ms. Haque requested reclassification of her Environmental Analyst III position to Environmental Analyst IV. The preponderance of the evidence shows she is not currently performing the essential duties of an Environmental Analyst IV at least 51% of the time, and is properly classified as an Environmental Analyst III. Her Form 30 job description, done after she sought reclassification, is for Environmental Analyst III. She signed-off on this form. One Environmental Analyst IV duty is directly supervising employees. She does not directly supervise any employee. The level of analysis and original work Ms. Haque's duties require is less complicated with more data collection aspects to it than would be done by an Environmental Analyst IV or higher level who would be making a final determination using the Environmental Analyst III's collected data analysis. Her direct supervisor is functioning as and is in the position of an Environmental Analyst IV. I recommend that Ms. Haque's reclassification request be dismissed and that she be classified as an Environmental Analyst III.

TENTATIVE DECISION

The Petitioner, Albelee A. Haque, timely appealed to the Civil Service Commission ("CSC") pursuant to G. L. c. 30, § 49, the decision of the Commonwealth's Human Resources

Division upholding the denial decision of the Respondent, the Department of Environmental Protection (“DEP”), to change her job classification from Environmental Analyst III to Environmental Analyst IV.¹ (Exs. 4 & 5.) A pre-hearing was held before the CSC on February 25, 2014, and a hearing was held April 25, 2014, at the offices of the Division of Administrative Law Appeals (“DALA”) at One Congress Street, 11th Floor, Boston, MA 02114.

At the DALA hearing, various documents were admitted into evidence. (Exs. 1 – 17.) The hearing was digitally recorded. DEP presented the testimony of Steve Hallem, Ms. Haque’s immediate supervisor at DEP and an Environmental Analyst IV. Ms. Haque testified on her own behalf. Both parties made opening statements and filed post-hearing arguments by June 2, 2014 when the record closed.

FINDINGS OF FACT

Based on the stipulations, documents entered into evidence, the testimony presented, and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Albelee Haque is a DEP employee working at the DEP headquarters office in Boston from about August 2010. She holds a master’s degree in environmental engineering, and has taken a number of doctorate level courses in environmental chemistry, science and mathematics in preparation for receiving a doctorate degree. She has worked for DEP for about twenty-two years. In and around 2000, she became an Environmental Engineer III functioning as a water quality monitoring specialist. By 2012, she was primarily working on the Well Drilling Program’s Database. (Exs. 2 & 14. Testimony of Haque.)

2. Maintaining the Well Drilling Program data had previously been done by the Department of Conservation and Recreation (“DCR”). Ms. Haque helps with data entry, management and improvement of the information entered, and inputting historic data from

¹ There is some dispute whether or not Ms. Haque has been properly reclassified from Environmental Engineer III to Environmental Analyst III. It seems she may remain on the payroll as Environmental Engineer III despite working under a Form 30 job description as an Environmental Analyst III.

DCR that is at times hard to read off the cards. She seeks help in deciphering faded card information from a co-worker, Eric Cheung, an Environmental Analyst III, who had entered this same data while working at DCR. In turn, Ms. Haque helps Mr. Cheung become educated about the new data system housing the information at DEP. She also works on Well Driller Program projects with another Environmental Analyst III, Addis Abebe. She exercises critical thought analysis as she reviews, analyzes, and enters the data. She highlights any issues detected to report to Mr. Hallem. (Ex. 9. Testimony of Haque & Hallem.)

3. Ms. Haque has been doing this work with other Environmental Analysts while on the payroll and the existing organizational chart as an Environmental Engineer III. She is directly supervised and monitored by Mr. Hallem, an Environmental Analyst IV. He directly supervises all three of the Environmental Analyst IIIs in the Well Drilling Program. She does not directly supervise any employees. (Ex. 14. Testimony of Haque & Hallem.)

4. During Fiscal Year July 1, 2011 – June 30, 2012, Ms. Haque had an employee performance review system (“EPRS”) evaluation done by her supervisors, Mr. Hallem, and by Paul Blain, the head of the DEP Drinking Water Program/Source Protection Unit. Mr. Blain is Mr. Hallem’s direct supervisor. Ms. Haque was evaluated in August 2011, February 2012, and in August 2012 when she had her annual review. She was evaluated as an Environmental Analyst III. On both occasions, Ms. Haque signed-off with no comments to add on her evaluations. At this point she was not working under a Form 30 job description for the specific work she was doing. She received “meets” ratings. Mr. Hallem remarked in August 2012 that she needed to: “Concentrate attention on entering Well Completion Reports” into the new database. Ms. Haque checked the EPRS form that she agreed with Mr. Hallem’s evaluation on this point. She also received the comment that she was “[b]ecoming more familiar with the well drilling process.” Ms. Haque’s Duty 1 was:

Assist the Well Driller Program manager in the performance of hydrogeologic evaluations and reviews of well completion reports including the interpretation of lithologic logs, well construction standards and aquifer yield tests.

Under Duty 1, the performance criteria were:

1. Evaluations and interpretations meet program goals and objectives;
2. Coordination with program staff and the public is conducted in a professional manner; and,
3. Reviews of submittals consistently meet established timelines.

Duty 2 on the EPRS form was:

Provide technical support to the well driller program in its effort to develop well construction standards, well yield testing requirements, well driller field certification standards and well identification/tagging criteria.

Under Duty 2, the performance criteria were:

1. Technical support meets the WDP [Well Drilling Program] goals and objectives;
2. Coordination with program staff and the public is conducted in a professional manner; and,
3. Timeliness are met on a consistent basis.

The comment listed under Duty 2 for Ms. Haque was: “Encouraged her to ask more questions about drilling.” Duty 3 on the EPRS form was:

Update the Well Driller Certification Program Well Completion Report database with hardcopy well information; reconcile data on old forms with logically possible wells given the context of the area’s lithology and the nature of well drilling; attach a computer generated file number to each report and catalog groundwater database.

Under Duty 3, the performance criteria were:

1. Database is updated in a timely manner (average of 20? well completion reports daily);
2. Data is properly interpreted and correctly entered into the database;
3. Contact/location data for each well is verified and correctly entered;
4. Well identification numbers are generated and correctly marked on well completion reports; and,
5. Processed well completion reports are properly filed.

The comment listed under Duty 3 for Ms. Haque was: “Encouraged to ask more questions regarding entries on hard copy prior to entering into database. Also, to increase production to 20 record average.” Duty 4 on the EPRS form was:

Update the “Summary of Board of Health Requirements for Well Drilling/Construction in Massachusetts” database.

The performance criteria were:

1. Database Board of Health contact information is verified and corrected accordingly;
2. Database updating meets or exceeds data quality standards.
3. Database is updated in the agreed upon time by supervisor and employee; and,
4. Interaction with Boards of Health is conducted in a courteous and professional manner.

No comments were listed under Duty 4, the last duty listed on the EPRS form. (Ex. 13.

Testimony of Hallem & Haque.)

5. During Fiscal Year July 1, 2012 – June 30, 2013, Ms. Haque had an EPRS evaluation done by her supervisors, Mr. Hallem and Paul Blain. She was evaluated in August 2012, April 2013, and in July and August 2013 for her annual review. She was evaluated as an Environmental Analyst III. On both occasions, Ms. Haque signed-off with no comments to add to her evaluations. She was still not working under a Form 30 job description. She received “meets” ratings. Mr. Hallem remarked in July 2013 that she needed to: “Concentrate on keeping on target for card entry goal.” Ms. Haque checked the EPRS form that she agreed with Mr. Hallem’s evaluation on this point. She also received a comment from Mr. Blain from August 2013: “Performance rating will be predicated on Albelee meeting the goals set by her supervisor for entering well completion reports into the Well Driller database.” Ms. Haque’s Duties 1, 2, 3 and 4 and their performance criteria did not change from the prior fiscal year EPRS form. Under Duty 1, Ms. Haque was given the following comments:

[P]rovide interpretation of well tests and construction and well logs.

[P]ut more focus on cards. She claims new computer keyboard isn’t working well & told her to contact IT. Other duties should not distract her from meeting her card entry goal.

Ms. Haque did not receive any comments under Duty 2 on the EPRS form. Under Duty 3, she received the following comments:

[I]mprove data entry productivity to meet the number of reports entered. She also [is] to ask for assistance. Sooner to interpret well card data. Discussed email sent to Paul Blain where she estimated her time allocation as not meeting Well Driller Program Goals.

She feels more confident in this task than when we last spoke. She will go to Eric Cheung for help.

Under Duty 4, Ms. Haque received the following comment: “Hasn’t worked on this for awhile.” On this EPRS form a new duty appeared, Duty 5. It was set forth as: “Assist DWP [Drinking Water Program] work Manganese treatment.” The performance criteria were: “Assist the Manganese Coordinator with research, detiga (sic) and review of reports. (Duty added in Stage B).” Ms. Haque received a “meets” rating. She received the following comment for Duty 5: “Supervised intern ... on this task.” (Ex. 13. Testimony of Hallem & Haque.)

6. Mr. Hallem responded to a list of duties Ms. Haque developed in April 2013 that included the estimated amounts of time she was spending on them. She also included a list of her activities not funded by DEP. She listed her position as Environmental Engineer III. After each of Ms. Haque’s estimated time percentages for each work duty, Mr. Hallem entered in parentheses his estimate of the time she should be spending on the listed tasks. This email was copied to Mr. Blain and was titled, “As discussed at EPRS Stage B 2013 today.” Regarding Duty 5, Mr. Hallem estimated this work would likely involve a time commitment of “5-10%” of her time.

- Data Management (Well Driller Program – Historical Well Data) – 10% (90%)
- Administrative Support – 5% (Minimal)
- Drinking Water Regulations and Policy Development – Assisting Steve [Hallem] with sections of DEP regulations and policy development related to Well Drillers Program, 310 CMR 46 (example, doing very thorough and in-depth research/investigation on what other states require for the use of fluids, liquids, as well as disinfectants utilized for effective and safe water well yield enhancement) – 23% (4%)
- Working with DEP Boston – Diversity Office (as needed basis only) – 2% (as needed)
- Assisting the Director of Technical Services Branch and direct supervisor Steve Hallem with Hydrogeology/Well Drillers training (National Convention – Plymouth Harbor, MA) and relevant presentations; also

independent educational poster presentations at UMass Amherst (e.g., Climate/biogeochemistry and Cape Cod hydrogeology) – 20% (minimal, not to include poster at UMass.)

- Training, planning, giving/receiving guidance – 2% (0.5%)
- Coordinating with internal (BRP) and external to BRP watershed/drinking water program related/interested parties and stakeholders including BOHs (such as, assisting Suzanne Rovert on Arsenic/radionuclide issues only as-needed basis – MassDEP certified labs/also with Joe Cerutti) – 35% (as needed)

Note: Miscellaneous work with my direct supervisor and GIS Analyst, Alice Doyle giving poster/PPT presentations outside DEP only when and as reviewed/approved by Steve. Examples –

- 1) NEAEB – New England Association of Environmental Biologists Conf. presentation Title: Lake management in the era of uncertainty (Thurs. 3/21/13, Lake Placid) – As a BEN North America volunteer supported by UMass Lowell Graduate School of Education (based on a proposed doctoral thesis at UMass Lowell)
- 2) UMass Amherst 2012 National Fish Passage Conference – June 2012
- 3) Sustainable Remediation 2011 – International Conf. of the Environmental Institute. Invited Poster Title – Sustainable remediation of fish mercury: Monitoring, evaluation, energy revolution and renewable solution, June 1-2 @ UMass Amherst [funded by The Environmental Institute (TEI) scholarship by Mary Francoise]
- 4) Psychology, perception and risk Communication through dialogue: The Climate change implications for lake management – Nov 2011 Spokane Convention of NALMS
- 5) International Conference of the North American Lake Management Society – 2010 Oklahoma's Cox compounds and methylation
- 6) Lexington High School Career Day Presentations (poster/panel discussions) as a SERV volunteer (Tuesday, January 29, 2013) and also on own time – Thursday, January 31, 2013.

Funding was not provided by the DEP for travel (personal/BEN Youth Gr. Financed); also I participated as either a Harvard Summer School or UML – graduate student only when supervisors also approved vacation time for the travel/miscell. activities above. Finally, I was on a steep learning curve here at Boston-DWP and appreciate v. much all congeniality and also professional demeanor of DEP colleagues (Bruce is always kind; cube neighbor Andrew, and Margaret/Maria, Eric/Addis are all wonderful DWP colleagues).

Mr. Hallem commented that Ms. Haque's list of extra activities 1-6,

are to be done on your own time as they are related to your education and are not part of your DEP job in DWP, Well Drillers Program. While they may be worthwhile causes, they are not part of your job here.

(Ex. 12. Testimony of Hallem & Haque.)

7. For fiscal year July 1, 2013 – June 30, 2014, a partial EPRS form was

completed for Ms. Haque by Mr. Hallem with a review by Mr. Blain. They both signed the evaluation form in July and August 2013, and in February 2014. The process on these two time periods involved a discussion with Ms. Haque about her duties and how to prioritize addressing each duty. She signed the evaluation form in July 2013 and February 2014. She did not include any comments. Her duties were listed unchanged from the prior fiscal year EPRS form. Duty 5 on this EPRS form was:

Provide support for our Water Quality Assurance section with Point of Entry and Point of Use tasks relative to EPA or DWP as assigned, currently assigned Manganese.

The performance criteria were:

- A. Provide concise review of available literature as it pertains to the task in a timely manner.
- B. Provide review and methods of use of treatment devices in question based upon available literature.
- C. Contact experts, designers, technicians to obtain additional information on the Task as assigned, providing a concise review.

Ms. Haque was not provided with any ratings on her EPRS form through February 2014, but Mr. Hallem provided the following remarks on an attached page that included a rating of “meets”:

Albelee [Haque] states she entered 40 Well Completion Reports per week. A new duty was added post stage A: Assist UIC Program Coordinator with permit review for a simple class of injection wells.

She initially was putting too much time and was adding comments for the programs within the DWP which the UIC program does not oversee. A meeting with the UIC Coordinator (Joe Cerutti), her and myself seemed to help Albelee understand the nature and scope of the review. Meets.

(Ex. 11 & 14. Testimony of Hallem & Haque.)

8. From the time Ms. Haque began to work on the Point of Use (“POU”)-Point of Entry (“POE”) additional work and through the time she worked on the UIC additional work organized by Mr. Cerutti, an Environmental Analyst IV within her unit, she has worked the bulk of her time on these additional projects. She decided these are priority work items that she has to get done even if it means she is not meeting her Well Driller Program Database

input goals and other related tasks. She never received an instruction from Mr. Hallem that she could let the project work become her main duty, but she has assumed that as her direct supervisor, he knew this was happening. She also assumed Mr. Blain as her unit head was aware of the time she was spending on the project work. She feels she has been reporting on doing this work to them via work reports that she fills out periodically, mostly each month, covering a particular work week being asked about. Although she did not realize this, Mr. Hallem does not view such reports as part of his routine supervision over her. Ms. Haque also feels that she has been directly supervising Mr. Cheung in the database work; that he came from DCR and needed help with the DEP computer programming for this work, etc. At no time has Mr. Hallem delegated to Ms. Haque any direct or functional supervision over Mr. Cheung. Rather, he has asked Ms. Haque to assist and instruct Mr. Cheung on using the DEP database. He also wants Mr. Haque to ask questions as needed about the historical data involved in the Well Drilling Program that Mr. Cheung knows about because of his work on them while he was at DCR. Mr. Hallem appreciates that Ms. Haque is directly instructing and supervising the student interns she has been given to help her on her additional work projects. (Exs. 14

& 17. Testimony of Haque & Hallem.)

9. On September 30, 2013, Ms. Haque decided to seek reclassification of her position of Environmental Engineer III to Environmental Engineer IV, or to Environmental Analyst IV. She explained in her request form filed with DEP;

I am involved in doing in-depth/extensive research for my direct supervisor and others, as well as, review/analysis along with writing or preparation of documents after data processing. Also, I recently attended Harvard Extension School and UMass. Lowell as a doctoral student (2011-2012) and published the final thesis supported by reasoning.

(Ex. 7. Testimony of Haque.)

10. Once Ms. Haque's request was received, John Busick, Personnel Analyst

within the Staff Services Unit of DEP, contacted Mr. Hallem, Mr. Blain and Ms. DePeiza about this request. He asked for a Form 30 job description about Ms. Haque's "CURRENTLY assigned [duties] by management/supervision ... The recently completed EPRS can serve as a guide." (Ex. 9.)

11. After receiving Mr. Busick's request, on or about October 7, 2013, Mr. Hallem and Ms. Haque signed a Form 30 job description for her as an Environmental Analyst III. The general statement of responsibilities reads: "Assist the Well Drilling Program Manager in the performance of hydrogeologic evaluations and reviews of well completion reports including the interpretation of lithologic logs, well construction standards and aquifer yield tests." Mr. Hallem, as an Environmental Analyst IV, is listed as her direct supervisor. The Form 30 indicates that she has no staff directly reporting to her. Details of her duties include:

Provide technical support to the well driller program in its effort to develop well construction standards, well yield testing requirements, well driller field certification standards and well identification/tagging criteria.

Update the Well Driller Certification Program, Well Completion Report database with hardcopy well information; reconcile data on old forms with logically possible wells given the context of the area's lithology and the nature of well drilling; attach a computer generated file number to each report and catalog groundwater database.

Update the "Summary of Board of Health Requirements for Well Drilling/Construction in Massachusetts" database.

Assist the Manganese treatment data collection; gather data from the web or individuals in other states relative to treatment technology.

Assist with Well Driller Training and other training as becomes available for Drinking Water Program Staff.

The Form 30 notes that Ms. Haque was transferred to the Well Driller Program from "DWM CERO" within DEP, and that required in doing the work is knowledge of "[s]ome geology and well drilling terminology." In terms of entrance requirements, the years of experience called for involving "technical or professional experience in the field of environmental science, microbiology, chemistry, earth science, environmental health, meteorology, natural

science, toxicology or public health,” can be substituted by education levels in these fields.

(Ex. 9. Testimony of Hallem & Haque.)

12. Ms. Haque completed a DEP Interview Guide questionnaire about her work on October 4, 2013. She noted that she had been in her current position from August 20, 2010. She listed Mr. Hallem as her immediate supervisor and indicated that he held the position of Environmental Analyst IV or perhaps V from a recent change. She listed her functional title as “Drinking Water Program Analyst.” She listed March or April 2013 as the time when her job duties significantly changed, noting that her work “has become very research-oriented.” She referred to the “POU-POE project” as “demanding.” She acknowledged not directly supervising any employees, but provided direct functional supervision to interns. She provided a memorandum of October 2, 2013 to explain in detail her request for reclassification. (Ex. 8. Testimony of Haque.)

13. In arguing that her work is at the level of Environmental Analyst IV, Ms. Haque’s memorandum explained:

- I do in-depth/extensive research for my direct supervisor [Mr. Hallem] and others (approximately 35% of my time) as well as attend meetings inside or outside DEP as requested by either my direct supervisor/Paul G. Blain, or the new Director – Drinking Water Program.
- Also I am involved in careful reading, data interpretation and well drillers data processing (35%)
- My job duties include skillful communication with other states, thorough review of EPA documents related to Point-of-Entry and Point-of-Use Treatment Technology, as well as review of MassDEP Wells Administration **historic data** (Database development by Hallem, A. Abebe and IT)
- **The basis purpose of job:** foster better communication with DWP staff (Boston office and the regions, interns) and the regulated communities to adequately ensure public health protection.
- Some specific duties (another 30% of time) and challenges associated with the job:
 - 1) Assist supervisors with the Drinking Water Program priorities, which include writing and preparation of draft documents (attached is a sample POU application – draft).

- 2) Professional quality and timely completion; use feedbacks from all including Eric [Cheung].
- 3) Problem solving and reasoning – Meetings inside/outside DEP to better understand the nature of a problem/issue related to safe drinking water (not excluding source water collaborative), and propose or facilitate timely solutions supported by reason.
- 4) Consensus building – It calls for higher thinking, evaluation and reinterpretation.

(Ex. 8.)

14. Ms. Haque included a group of emails in her memorandum to show she was doing more than the Well Drilling Program work, and was doing a number of special projects that involved Environmental Analyst IV level work. She included emails from September 2013 where she communicated with her direct supervisor and superiors, Mr. Hallem, Mr. Blain, and other DEP higher level Environmental Analysts and unit heads. Ms. Haque included an email from Yvette DePeiza, the Director of the Drinking Water Program at DEP to Mr. Hallem explaining how Director DePeiza had discussed,

the specific products for ... [Ms. Haque's] work on creating a POU/POE application for PWS in Mass. ... [She] will be collection (sic) the forms and information from other states with active programs to prepare a draft application form within 30 days. The forms will take into account all current DWP regulations, SOPs and Factsheets on POU/POE treatment. I provided Albelee with a link to the DWP document for new system development for small systems.

Ms. Haque included an email from Margaret Finn, an Environmental Engineer IV, with “a checklist of items needed for a permit application” in connection with the POU/POE project. Ms. Haque included an email she sent stating that she would be completing “the POU/POE application for PWS ... by October 25. No problem is anticipated!” She also included a discussion of a draft Well Driller regulation revision that was based on “what other states allow as a drilling fluid,” and what “the consensus was” about what Massachusetts would not allow. She asked a question about use of “liquid CO₂, nitrogen for percussion or other chemicals as opposed to only portable water ... [and] if Massachusetts already has or lately had opted a well yield enhancement rule?” She reported that “Texas has the most rigorous water conservation/education program to adapt to climate change and balance economic

activities” and that “Minnesota has one of the most stringent licensing requirements that regulate hydrofracking with flexible options to ensure quality.” Ms. Haque’s memorandum included what she provided to Mr. Hallem in response to information he sought on the type of external coordination she was doing for the POU/POE project. This was in early October 2013. She gave him an example: “[T]o perform DWP duties include contacting ... Ohio EPA to get information related to Ohio EPA’s POU/POE program ... as well as send electronic documents for understanding Ohio’s approach to Arsenic/ Nitrate POU-POE option. Another contact is Kansas (KDHE).” Ms. Haque included an instruction to her from Director DePeiza that Mr. Hallem could answer questions about well drillers, and that Director DePeiza had,

full confidence that Paul [Blain], Steve [Hallem] and the 3rd party working group have adequately addressed all Massachusetts well driller issues in the reg. draft. You will have ample opportunity to continue to comment on the Well Driller package after you complete the POU/POE project.

(Exs. 8 & 14. Testimony of Haque.)

15. Ms. Haque’s attachments to her Interview Guide also included various emails showing Mr. Hallem was keeping track of her work progress on the POU-POE project. He instructed her to enter on her timesheet the code of 810 for her POU-POE research.

BASIC RESEARCH

This code covers time spent on **general research activities** including conducting data searches, reviewing literature, general information-gathering, and synthesis and summarization of findings.

(Ex. 8. Testimony of Haque.)

16. Ms. Haque provided examples in these attachments to her Interview Guide of emails showing permission from Mr. Hallem to pursue, using her vacation or personal time, attending and presenting papers at conferences on DEP related topics not involving her assigned work. He explained that he could not approve as DEP work all the conferences, etc., she requested doing. He emphasized the need for her to accomplish her required job duties as her priority.

[I]f you wish to attend a conference and it is to present or just to be an attendee, and it [is] for your own interests you may take time off from work (as

personal or vacation time). This is not part of your duties and you may not charge the time. You may ... request the appropriate time off, and if approved, may go ... representing yourself (not DEP).

Ms. Haque's Interview Guide attachments included a response from Mr. Hallem about her request to do an event like one she already had permission to attend.

I am inclined to let you go to help judge at Tufts and I had already given my permission for you to go to the one at MIT. Having said that: We need to balance our time between events such as these with work. In general, while it is not a hard and fast rule, the limit should be 1 every 3 months, and probably best 1 every 6 months. These events are in support of environmental interests that are shared by the Department in general and we have the support of upper management to staff them (in this case judge). This time can be charged as time with the appropriate code.

(Ex. 8. Testimony of Haque.)

17. On October 17, 2013, after Ms. Haque produced her Interview Guide in support of her claim for reclassification and without having had any talks or interview about her claim, John J. Viola, Director of DEP's Division of Workforce Services, informed her that a "formal review" was done of her request, and that "it was determined that ... [her] position is correctly classified ... Environmental Analyst III." She was provided with her appeal rights to the Commonwealth's Human Resources Division. No analysis or reasoning was included explaining why her claim lacked merit. (Exs. 6 & 8. Testimony of Haque.)

18. Ms. Haque was unable to complete the draft application for the POU-POE project by her October, 25, 2013 goal. Once submitted, her draft had to be further worked on after that by her superiors. (Ex. 10. Testimony of Hallem & Haque.)

19. The job classification specification for the Environmental Analyst Series from 1989 covers levels I through VI. The summary states:

Incumbents ... prepare and/or review scientific reports, studies and analytical data of environmental impacts and ... processes; perform calculations relating to environmental science problems; determine possible impacts on water, soil, air and public health; measure levels of pollution; identify sources of pollution; and perform related work as required.

The basic purpose of this work is to perform professional environmental analysis duties in such areas as air pollution, water supply and pollution, toxicology, ecology and public health and hazardous and solid waste

management in order to locate, abate or control sources of environmental pollutants, all in accordance with applicable laws, rules, regulations, standards and sound environmental science principles and practices.

The work can include reviewing and summarizing,

environmental data associated with applications for permits and siting of waste disposal facilities ... [performing] calculations such as those related to groundwater flow, pollutant dispersion, mortality, population ecology and toxicological risk by using calculators or computer models, to solve environmental science problems ... [writing] memoranda, letters and technical or general reports concerning the environment to provide information and ... recommendations regarding such matters as public and private water supplies, environmental pollution control surveys and inspections, and the status of projects ... [collecting] samples and ... [record] changes to the environment or to associated public health risks during the design and/or construction of projects which will alter the natural environment ... [inspecting proposed ... and existing locations of water supply and/or waste water treatment operations, industrial or hazardous waste treatment facilities and sanitary landfills ... [conducting] tests and surveys such as vegetational surveys, water quality sampling, radiological surveys and/or geological surveys ... [monitoring] environmental conditions by operating photoionization detectors, gas chromatographs, explosimeters, pH meters and other analytical field equipment ... [performing] related duties such as collecting, compiling and correlating environmental data; reading manufacturers' publications and meeting with manufacturers' representatives to keep abreast of latest technical advances, new products, product prices, safety hazards, ad specifications; maintaining records; providing technical advice on such matters as environmental impact and regulatory codes; and attending meetings and conferences.

(Ex. 16.)

20. The Environmental Analyst III is the "first-level supervisory job in this series," and that position can,

exercise direct supervision ... over, assign work to and review the performance of 1-5 technical or professional personnel; may exercise indirect supervision (i.e., through an intermediate level supervisor) over 6-15 technical and/or professional personnel; and may exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 1-5 technical or professional personnel.

The Environmental Analyst IV can,

exercise direct supervision ... over, assign work to and review the performance of 1-5 professional personnel; and exercise indirect supervision (i.e., through an intermediate level supervisor) over 6-15 professional and/or technical personnel; and exercise functional supervision (i.e., over certain but not all work activities, or over some or all work activities on a temporary basis) over 6-15 technical or professional personnel.

The Environmental Analysts III and IV receive,

general supervision from Environmental Analysts or other employees of higher grade who provide guidance on policies and procedures, assign work and review performance through conferences and reports for conformance with professional standards and compliance with laws, rules, regulations and established procedures.

The qualifications the Environmental Analyst III and higher levels include the following:

Ability to supervise, including planning and assigning work according to the nature of the job to be accomplished, the capabilities of subordinates and available resources; controlling work through periodic reviews and/or evaluations; determining subordinates' training needs and providing or arranging for such training; motivating subordinates to work effectively; determining the need for disciplinary action and either recommending or initiating disciplinary action ... Ability to determine proper format and procedure for assembling items of information.

The qualifications the Environmental Analyst IV and higher levels include the following:

Knowledge of the principles, practices and techniques of supervision ...
Ability to accomplish work objectives when few precedents or guidelines are available.

(Ex. 16.)

21. In terms of differences between the work done by an Environmental Analyst

III versus Environmental Analyst IV, the level IV work includes tasks not done by level III

such as:

Deliver expert testimony at court proceedings ... Determine data collection methods for soil, air, waste and water sampling ... Conduct risk analysis for sites/projects which have impact on or will alter the natural environment ... Develop methodologies and procedures for the accumulation of scientific data ... Recommend approval/disapproval of applications for licenses or permits for hazardous waste storage or other projects ... Determine project environmental impacts and relative risks to the public health, watersheds, wetlands, freshwater bodies or estuaries ... Develop operational strategies for dealing with compliance and enforcement in the area of hazardous waste management, toxic materials in the work place and wetlands protection ... Review environmental consulting service proposals and contracts and recommend changes to technical specifications.

Both level III and level IV Environmental Analysts do the following that is not done by level I or level II Environmental Analysts:

Write the technical specifications and utilize item service cost estimates to develop the budget portion of agreements and grant applications for the assessment and remediation of hazardous waste ... Determine enforcement actions and corrective measures to be taken when violation of laws, rules and regulations are discovered ... Review and recommend data collection methods for soil, air, waste and water sampling ... Conduct scientific studies and prepare reports in such areas as meteorology, air pollutant dispersion, contaminant migration, hydrology, hydrogeology and marine ecology ... Advise legal staff on environmental matters; prepare scientific data for courtroom testimony ... Analyze environmental impact and public health risk assessments associated with licensing of hazardous waste treatment, storage or transport projects ... Develop and maintain computer programs to track environmental data ... Conduct meetings and/or conferences with agency staff, contractors and interested parties on environmental issues such as air, water, soil and wetland impacts, public health effects and investigating and resolving problems ... Monitor the activities of consultants in identifying and treating environmental pollutants ... Recommend operational strategies for dealing with compliance and enforcement in the area of public health and environmental protection ... Recommend operational strategies for dealing with compliance and enforcement in the area of public health and environmental protection ... Review and approve health and safety plans for environmental assessment and during remedial construction programs.

(Ex. 16.)

22. The Environmental Engineer job classification series from 1989 covers levels

I through VI. The summary of duties covers the following:

Incumbents of positions in this series prepare and/or review plans, designs, specifications and cost estimates for environmental engineering projects; prepare and review analytical data for sanitary, environmental and air pollution control projects; perform calculations relating to environmental engineering problems; conduct field investigations and surveys in such areas as noise, air, water, waste water, industrial or hazardous waste; and perform related work as required.

The basic purpose of this work is to perform professional engineering duties in such areas as air and water pollution, water distribution and treatment, sewage treatment and solid waste management to locate, abate or control sources of environmental pollutants in accordance with sound engineering principles and applicable laws, regulations and standards.

(Ex. 15.)

23. By the time Ms. Haque sought a reclassification of her job, she was predominantly performing tasks more aligned with the work of an Environmental Analyst than of an Environmental Engineer. This is why the Form 30 job description was done for her as an Environmental Analyst. (Ex. 9. Testimony of Hallem.)

24. In terms of the differences between doing predominantly Environmental Analyst work at level III versus level IV within DEP's Drinking Water Program, the level IV position engages in more complex and overall decision-making tasks even if both levels of work cover the same topics. The level III work involves researching, locating, doing data collection, and investigating existing information from various pertinent sources. It involves assessing what was uncovered by reviewing, analyzing and organizing how the information can help address an overall issue. The level IV and above work involves final overall project decisions concerning how the data will be used and what methods will be employed to address a topic or issue. It can also involve generating new information from direct analyses performed. The level III work involves doing research and assessments on risk analysis and presenting such information to a supervisor or superiors who will make the final decision concerning risk. This is the role of Ms. Haque's supervisor and superiors who were Environmental Analysts IVs, an Environmental Engineer IV, and employees holding higher level positions. The level IV Environmental Analyst also directly supervises and advises the level III Environmental Analyst concerning the assigned work. This breakdown of the kind of work involved covers Ms. Haque's additional assigned project work, her Duty 5 work on her EPRS forms. The Form 30 job description recognizes this distinction. The attachments to Ms. Haque's Interview Guide contain descriptions of work that align with this distinction between level III versus level IV Environmental Analyst duties. (Exs. 8, 9, 10 & 16. Testimony of Hallem & Haque.)

25. Ms. Haque appealed the DEP denial determination to the Human Resources Division. By letter of December 13, 2013, Ms. Haque was notified that the appeal was denied. She then timely appealed on January 14, 2014 to the Civil Service Commission. (Exs. 4 & 5.)

Conclusion and Recommendation

Ms. Haque has shown that she is a good worker whose superiors recognize her important contributions. She is a committed and effective professional who is proud of her accomplishments. It is impressive that she is working toward receipt of her doctorate degree. However, being capable of working in a higher classified position, or being worthy of a promotion, are not the standards to use in a M.G.L. c. 30, § 49 appeal that determines whether you are working the duties of a position other than the one you are in. “The determining factor of a reclassification is the distribution of time that an individual spends performing the function of a job classification.” *Roscoe v. Dept. of Environmental Protection*, 15 MCSR 47 (2002). Ms. Haque has the burden of proof to show by a preponderance of the evidence that she is currently routinely performing the specific duties of an Environmental Analyst IV for at least 51% of the time so that she is improperly classified as an Environmental Analyst III or as an Environmental Engineer III.² Unfortunately, Ms. Haque has not shown she engages in the essential duties of an Environmental Analyst IV. See, *Straub v. Dept. of Conservation and Recreation and Civil Service Commission*, Superior Court Civil Action No. SUCV2010-04153, Ames, J. (October 10, 2013); *Shields v. Dept. of Revenue & Civil Service Commission*, Superior Court Civil Action No. SUCV2008-3288, Connors, J. (October 29, 2009); *Kurt v. Mass. Highway Dept.*, C-09-428 (CSC, 2010); *Wilson v. University of Mass.*, C-08-287 (CSC, 2010); *Costa v. Dept. of Revenue*, C-07-285 (CSC, 2008); *Goodridge v. Dept. of Revenue*, C-07-186 (CSC, 2008); and, *Gaffey v. Dept. of Revenue*, C-07-137 (CSC, 2008).

On an ongoing basis, the Environmental Analyst IV provides direct supervision over the work of a number of lower level positions. The supervisor establishes the parameters of the lower level position’s required tasks with ongoing monitoring of the quality of the work of that employee. The detailed information in the Environmental Analyst job series supports this conclusion regarding what is meant by supervisory duties and includes performing EPRS evaluations. (Ex. 16.) This assessment of providing supervision is also supported and

² Ms. Haque argues as a procedural wrong that DEP did not question her after she filed her Interview

explained by the understandable and believable testimony of Mr. Hallem, himself an Environmental Analyst IV who is Ms. Haque's direct supervisor. The organizational chart shows Ms. Haque does not have any supervisory duties over other employees. (Ex. 14.) The student interns Ms. Haque instructs in what work to perform to help her on projects are not employees to satisfy this job duty supervision requirement. *Dziczek v. Dept. of Conservation and Recreation*, 20 MCSR 2000 (2007). Ms. Haque providing guidance to and answering questions from coworkers on how to address or understand particular aspects of a task is not the same role as being that coworker's direct supervisor with monitoring and oversight functions over that worker's job performance to satisfy the supervision job requirement. Ms. Haque's Form 30 is consistent with her having no direct supervision and monitoring of work tasks over lower level employees. (Ex. 9.) See, *Straub*, supra; *Blodgett v. Mass. Highway Dept.*, C-10-256 (CSC 2011); *Kowalski v. Dept. of Conservation and Recreation*, 21 MCSR 468 (2008).

Ms. Haque contends she is performing Environmental Analyst IV level work, but I rely on the convincing and believable testimony of Mr. Hallem to the contrary. He amply explains that the level of work she is performing is properly Environmental Analyst III work. Ms. Haque contends that she engages in high level risk analysis work. Mr. Hallem counters that she is largely doing high level data collection work from sources that are the kind typically used in tasks performed by Environmental Analyst IIIs. For instance, she is not using data originating with her own work. Mr. Hallem sees her work as assessing, organizing, and presenting data she has collected that is then turned over in a draft form for a further higher level review process than the one she has just done. Mr. Hallem persuasively explains the differences between the level III versus the level IV Environmental Analyst tasks. The job series for Environmental Analyst III and IV support this distinction as do Ms. Haque's

EPRS forms and her Form 30 job description. Even her attachments to the Interview Guide show this difference.

Ms. Haque's testimony did not match in its persuasiveness the detailed pertinent testimony of Mr. Hallem. She had no support from anyone holding a higher level position for reclassifying her job to Environmental Analyst IV. Neither Mr. Hallem's testimony nor any other evidence points to any difficulties he has with Ms. Haque on a personal basis or in terms of working together that might question the veracity of his account about why he finds Ms. Haque's duties fit within the reach of an Environmental Analyst III. Even if her project work involved a greater level of risk analysis and complicated tasks than her Well Driller Program primary duties, that does not make her project work Environmental Analyst IV work. Also, even if aspects of the project work is level IV work, the findings make clear that she knew or should have known that she was to not spend the majority of her time doing the project work. I did not find her testimony credible that she felt her supervisors knew and wanted her to spend most of her time on Duty 5 project work.

For these reasons I recommend that the Civil Service Commission dismiss Ms. Leighton's request for reclassification, and that she remain properly classified as Environmental Analyst III.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Sarah H. Luick, Esq.
Administrative Magistrate
Dated:

